

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.1148/2022(S.B.)

Dr. Shivshankar S/o. Jagdambaprasad Pande,
Aged: 62 years, Occ: Retired as District Malaria Officer,
Residence of Plot No. 28, Sham Nagar,
Near Bank of Maharashtra, Branch-Bhagwan Nagar,
Post- Parvati Nagar, Nagpur- 440027
Mob. No. 8788412483.

Applicant.

Versus

- 1) The State of Maharashtra,
Through the Principal Secretary,
Public Health Department,
G.T. Hospital, Sankul Building, 10th Floor.
Mantralaya Mumbai-400001.
- 2) The Commissioner,
Health Services and Director National Health Mission,
3rd Floor, Arogya Bhavan,
St. Georges Hospital Campus, Mumbai-1.
- 3) The Assistant Director Health Services
(Malaria and Filaria), Nagpur,
Matakacheri Parisar, Shradhanand Peth,
Near Dikshabhumi, Nagpur-440010.

4) The Deputy Director,
Health Services Nagpur Division, Nagpur,
Matakacheri Parisar, Shradhanand Peth,
Near Dikshabhumi, Nagpur-440010.

5) The Accountant General (Accounts and Entitlement).
Office of the Accountant General,
(Accounts & Entitlements)-I Pension Wing,
Old Building, P.B. NO. 114, G.P.O,
Civil Lines, Nagpur- 440001.

Respondents

Shri S.M.Bhangde, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 26th February, 2024.

JUDGMENT

Judgment is reserved on 20th February, 2024.

Judgment is pronounced on 26th February, 2024.

Heard Shri S.M.Bhangde, learned counsel for the applicant
and Shri S.A.Sainis, learned P.O. for the respondents.

2. When the applicant was working as District Malaria Officer
at Gadchiroli, he was arrested on 21.03.2018 in Crime No.127/2018
registered at Gadchiroli Police Station under Sections 7, 13(1)(d) r.w.

13(2) of the Prevention of Corruption Act. By order dated 31.07.2018 (Annexure A-4) he was placed under suspension. He retired on superannuation on the same day (Annexure A-3). He was paid provisional pension for 24 months. His retiral benefits were not released inspite of representations dated 27.04.2020, 20.11.2020 and 16.08.2022 (Annexures A-7, A-8 and A-9, respectively). Hence, this O.A..

3. Stand of respondents 1 to 4 is as follows. The applicant was served with a charge-sheet dated 09.08.2019. Enquiry Officer was appointed on 04.02.2021. Report of enquiry was forwarded to respondent no.1 on 12.11.2021 and by letter dated 04.05.2022 the applicant was called upon to give his say on enquiry report. Thus, departmental enquiry is pending against the applicant. On the basis of Crime No.127/2018 Special Case (A.C.B.) No.05/2019 is pending in Special Court at Gadchiroli. Thus, judicial proceeding is also pending against the applicant. As per Rule 130 of the M.C.S. (Pension) Rules, 1982 unless judicial / departmental proceedings terminate retiral benefits of the applicant cannot be released.

4. In the instant case the applicant retired on 31.07.2018. On that day no departmental enquiry was pending against him. Departmental enquiry was initiated on 09.08.2019 by issuing charge-sheet. Charge-sheet was submitted in Special Court, after concluding

investigation in Crime No.127/2018, in Special Court at Gadchiroli on 07.06.2019 as shown by extract of ECourts Services. Thus, on the date of retirement of the applicant judicial proceeding was also not pending against him. So far as this aspect of the matter is concerned, reliance may be placed on order dated 23.02.2023 passed by Aurangabad Bench of this Tribunal in O.A.No.06/2022 wherein it is observed-

After having considered the facts and circumstances, it appears to me that the respondents cannot withhold the retiral benefits payable to the applicant on the ground that criminal prosecution is pending against the applicant. As is revealing from the chronology of the events, though the FIR was registered on 31.1.2013, that date is not material for withholding the retiral benefits. The charge-sheet has been filed on 8.4.2022 i.e. after the retirement of the applicant. It is thus, evident that on the date of retirement no criminal prosecution can be said to be pending against the applicant.

5. So far as question of pendency of departmental enquiry is concerned, reliance may be placed on the following observations made in Judgment dated 25.03.2022 by the Principal Bench of this Tribunal in O.A.No.53/2022-

"15. In view of aforesaid discussion, the inevitable position emerges that there being no initiation of DE on the date of retirement, the Respondents could not have withheld gratuity and regular pension. The submission advanced by learned P.O. that DE was contemplated, and therefore, regular pension and gratuity can be withheld is contrary to the legal position. Once Applicant retired without any DE,

his right to pension and gratuity accrues to him and it cannot be kept in abeyance on speculation or possibility of initiation of DE in future.

16. Indeed, this situation is no longer res-integra in view of decisions rendered by this Tribunal in O.A.No.188/2020 (Vilas R. Walgude Vs. The State of Maharashtra) dated 27.07.2020 and O.A.No.748/2020 (Avinash M. Patil Vs. The Commissioner, ESIS) decided on 25.06.2021 as well as G.R. dated 06.10.1998 issued by Government reiterating the provisions of Pension Rules 1982' as reproduced above. Insofar as DE now initiated is concerned, it will take its own course and it is only in case of positive finding in the DE, the Applicant can be subjected to punishment of withholding pension in terms of Rule 27 of 'Pension Rules of 1982' as Government deems fit."

6. Taking into account the view taken by this Tribunal in above referred Original Applications instant O.A. deserves to be allowed. It is accordingly allowed in the following terms-

The respondents are directed to release all retiral benefits of the applicant within three months from today on his furnishing a bond that in the event of adverse order/s passed in judicial / departmental proceeding he will refund the amount released in his favour, if so directed by the concerned authority. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 26/02/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 26/02/2024.
and pronounced on
Uploaded on : 27/02/2024.